

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: FOSAMAX (ALENDRONATE SODIUM)
PRODUCTS LIABILITY LITIGATION (NO. II)

Barbara Frye, et al. v. Merck & Co., Inc., et al.,)
S.D. Indiana, C.A. No. 1:11-01560) MDL No. 2243

TRANSFER ORDER

Before the Panel:* Pursuant to Rule 7.1, defendant Novartis Pharmaceuticals Corporation (Novartis) moves to vacate our order conditionally transferring this action (*Frye*) to MDL No. 2243, to the extent that the order simultaneously separated and remanded, to the Southern District of Indiana, plaintiffs' claims involving bisphosphonate drugs other than Fosamax – specifically, Novartis's Reclast. The *Frye* plaintiffs support Novartis's motion, and no party responded in opposition.

After considering all argument of counsel, we find that the conditionally separated and remanded Reclast-related claims involve common questions of fact with claims in actions previously centralized in MDL No. 2243, and that transfer of *Frye*, in its entirety, to the District of New Jersey for inclusion in the centralized proceedings will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Although most of the presently-centralized actions involve questions of fact arising from allegations that the use of Fosamax or its generic equivalent alone caused femur fractures or similar bone injuries,¹ actions brought by plaintiffs alleging that they suffered such injuries as a result of taking a combination of Fosamax and Reclast are also already in the MDL. Indeed, we recently transferred, in its entirety, a District of Colorado action in which the plaintiff wife alleged that she had suffered femur fractures as a result of taking not only Fosamax but also two other bisphosphonates, including Reclast. *See* Transfer Order (J.P.M.L. Feb. 3, 2012) (doc. no. 276).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, this action, in its entirety, is transferred to the District of New Jersey, and, with the consent of that court, assigned to the Honorable Joel A. Pisano for inclusion in the coordinated or consolidated pretrial proceedings.

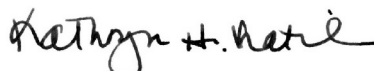
* Judge John G. Heyburn II took no part in the decision of this matter.

¹ *See In re: Fosamax (Alendronate Sodium) Prods. Liab. Litig.* (No. II), 787 F. Supp. 2d 1355, 1356 (J.P.M.L. 2011).

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IT IS FURTHER ORDERED that the Panel's conditional transfer order designated as "CTO-28" is vacated insofar as it directs that certain claims in this action be separated and remanded to the Southern District of Indiana.

PANEL ON MULTIDISTRICT LITIGATION



Kathryn H. Vratil
Acting Chairman

W. Royal Furgeson, Jr.
Paul J. Barbadoro
Charles R. Breyer

Barbara S. Jones
Marjorie O. Rendell